

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Emergency/Small/Sole Source PurchasesA. Emergency Purchases

1. Termination of Services/Dangerous Situations:

Emergency purchases of up to \$75,000 may be made by the superintendent. Purchases above that amount must be authorized by the Stafford County School Board. An emergency exists when a breakdown in machinery or equipment and/or a threatened termination of essential services or a dangerous condition develops, or when any unforeseen circumstances arise causing curtailment or diminution of an essential service or where materials or services are needed to prevent loss of life or property.

2. Life-Threatening Situations/Excess Property Damage Prevention:

The school board authorizes the superintendent to make emergency purchases in excess of \$75,000 in life-threatening situations and in circumstances where immediate action is needed to impede further damage to property.

3. Notice to School Board:

The superintendent shall inform the school board of emergency situations as soon as practicable. Depending on the situation, the superintendent will request the chairman to call a special session of the school board to make emergency purchases or will notify the board of emergency purchases authorized by the superintendent.

B. Small Purchases

The superintendent is authorized to make purchases of goods, contractual services, insurance and capital improvements estimated not to exceed \$25,000 in cost. The school board shall approve all purchases which cost in excess of \$25,000, unless the school board elects to exempt a particular purchasing action.

The superintendent may annually submit an exemption list of budgeted purchases which range in cost between \$25,000 to \$75,000 to the school board for its review. The school board may agree to some, all, or none of the requested exemptions. Those planned purchases which are board-exempted may be approved by the superintendent and do not require school board action.

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Emergency/Small/Sole Source Purchases

The school board shall receive a summary of items purchased by bid.

C. Sole Source Purchases

Upon determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive negotiation (See policy #4-35). The writing shall document the basis for this determination. (Code of Va., §2.2-4303)

Public Notice

Public notice shall be given under Parts A and C preceding consistent with those requirements set forth in the Code of Virginia.

Legal Reference: Through June 30, 2003

Code of Va., §2.2-4303. Methods of procurement.-

A. All public contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3 b of the definition of

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Emergency/Small/Sole Source Purchases

"competitive negotiation" in §2.2-4301. The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under §2.2-4306;
2. By any public body for the alteration, repair renovation or demolition of buildings when the contract is not expected to cost more than \$500,000;
3. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or
4. As otherwise provided in §2.2-4308.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body wards or announces its decision to award the contract, whichever occurs first. Public notice may also be published on the Department of General Services' central electronic procurement Web site and other appropriate Web sites.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Emergency/Small/Sole Source Purchases

included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' central electronic procurement Web site and other appropriate Web sites.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable. Purchases under this subsection that are expected to exceed \$30,000 shall require the written informal solicitation of a minimum of four bidders or offerors.

H. A public body may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$30,000; however such small purchase procedures shall provide for competition wherever practicable.

Upon a determination made in advance by the local governing body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction. The writing shall document the basis for this determination. (2001)

Code of Va., §2.2-4360. Protest of award or decision to award.--"A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Emergency/Small/Sole Source Purchases

award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in §2.2-4303. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under §2.2-4342, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under §2.2-4342, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of §2.2-4365, if available, or in the alternative by instituting legal action as provided in §2.2-4364 of this Code. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Emergency/Small/Sole Source Purchases

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where a public body, an official designated by that public body, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 6 (2.2-4367 et seq.) of this chapter, the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder." (2001)

Adopted by School Board: March 24, 1987
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